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Letter dated 27 December 2001 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from Mozambique, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you would arrange for this letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

[Original: English]

Letter dated 27 December 2001 from the Permanent Representative of Mozambique to the United Nations addressed to the Chairman of the Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

I have the honour to submit the report of the Republic of Mozambique on legislation and measures for preventing and combating terrorism, prepared pursuant to Security Council resolution 1373 (2001) (see enclosure).

(*Signed*) Carlos **dos Santos**
Ambassador Extraordinary and Plenipotentiary
Permanent Representative to the United Nations

Enclosure

REPÚBLICA DE MOÇAMBIQUE

MINISTÉRIO DOS NEGÓCIOS ESTRANGEIROS E COOPERAÇÂO

REPORT ON LEGISLATION AND MEASURES IN THE REPUBLIC OF MOZAMBIQUE FOR PREVENTING AND COMBATING TERRORISM

Maputo, December 2001

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1. Introduction

In the wake of September 11th terrorist attacks against the cities of New York, and Washington DC, His Excellency Joaquim Alberto Chissano, President of the Republic of Mozambique and the Mozambican Government expressed immediately and publicly their full repudiation to such a barbarous terrorist act.

On that occasion, they reiterated their firm condemnation of international terrorism and expressed their solidarity and sympathy with the American people and Government, particularly with the families of the victims of this terrorist act.

The Mozambican Government reaffirms its availability to join the international community in eradicating terrorism. On the other hand, it reiterates the legitimacy of the struggle of peoples under foreign domination or occupation, for their self-determination and national independence.

In this regard, and within the implementation of the United Nations Security Council Resolution 1373 (2001), the Government of Mozambique prepared the present Report which outlines legislative actions for preventing and combating terrorist at national and international levels.

2. National Legislation in General

Act No. 19/91, of 16th August, concerning Crimes Against the State Security defines and punishes, *inter alia*, **Spying** (Article 10), **Piracy** (Article 11), **Mercenarism** (Article 12), **Terrorism** (Article 13), **Sabotage** (Article 14), **Attack Against the Head of State or any other Foreign Public Entity** (Article 19).

The definition of terrorism under Article 13 above mentioned, covers, direct involvement as well as complicity in crimes falling into this category.

Under paragraph 1 of the above Article, the person committing terrorism is the one who:

a) *Places or causes to be placed, by any means, in a craft or aircraft, in public or private place or installations, as well as in any public or private equipment, any explosive or device capable to destruct or damage them, putting at stake goods, places or human and animal life, with the intent of creating social insecurity, terror or fright in the population or exert pressure on the State or any other economic, social or political organisation to carry out or refrain from carrying out certain activities;*

b) *Forges substances or food products or any others for consumption of people, animals or socio-economic units aimed to cause death or severe disturbances to health or economic life, in order to create insecurity social, terror and fright. These crimes are punishable with penalties, which varies from sixteen to twenty year of maximum imprisonment:*

Paragraph 2 of the same above Article provides that:

> *"Import, manufacture, stockpiling, purchase, sale or disposal, use and bearing of inflammable substances or instruments, explosives, fire arms, stifling, toxic or chemical and biological agents, or any others elements whose combinations can result in products of the some nature as those described above, or any other substance or explosive, beyond legal conditions or in contrary to prescriptions by competent authorities, are punishable, if their authors aimed or they knew that they were aimed to perpetrate any crime against State security, with a penalty from twelve to sixteen years of imprisonment. The penalties above described become more severe in the cases of crime commitment by homicide."*

On the other hand, there is also room, as the case may be, to combine accessory penalties of forfeit or loss of values or crime profits in favour of the State, as provided by the Penal Law.

Generally, act 19/19 together with other penal legislation of the Republic of Mozambique covers in terms of pursuance and punishment of terrorism crimes, including preparatory acts for such crime.

2.1. Control of entry and exit of aliens

Mozambique establishes its rules for the entry, staying and exit of aliens through Act 5/93 of 28th December.

Thus, paragraph 1 of Article 5 provides that the entry of foreigners into the country must be done through border posts officially established for that purpose. It further provides in Article 6 the requirements for such an entry, namely:

a) a valid passport or an equivalent document and a visa issued by an equally valid Mozambican competent authorities.

b) other established documents in international conventions agreements to which Mozambique is bound.

2.2. On Refugees

Act 21/91 of 31st December defines the concept of refugee and establishes the process mechanism which governs all formalities that the applications must follow for obtaining the refugee status by the applicants as from its submission until its final decision, with the ultimate goal to materialize the constitutional principle of respect and defence of human rights.

Due to the nature and implication deriving from granting the status of refugee, its decision is taken by top authorities of the state power.

Thus, paragraph 1, Article three of Act 21/91, provides that *"the Minister of Home Affairs, after an opinion of the Consultative Committee for refugees, shall be the deciding entity"*.

Paragraph 2 of the same Article provides that *"an appeal can be submitted to the Administrative Tribunal on the Minister of Home Affairs' decision"*.

Under sub-paragraph (a), paragraph 1 of Article 2, Act 21/91, it is provided that *"A refugee status shall not be granted to anyone and everyone who has committed or is accused to have committed a crime against peace, war crime or a crime against humanity in accordance with the Mozambican criminal law or international instrument to which Mozambique is part, with regard to relative provision of such crimes"*.

In this junction, it is the responsibility of the Consultative Committee for Refugees to make the analysis of the applications to asylum , make the necessary consultation and look at the eligibility of the applicant.

Article 14, Act 21/91, provides for the principle of *"non refoulement", according to which no refugee can be expelled from a given country where his/her life, physical integrity or freedom are threatened because of his/her political opinion.*

2.3. On Extradition

One of the aspects posed regarding the issue, punishment of terrorism crime is the extradition of people who committed such crimes, whose extradition may be requested by a certain concerned state under some grounding.

With respect to extradition matter, the Constitution provides, in its Article 103, that:

"1. Extradition only take place by court decision.
2. Extradition for political motives shall not be authorised.
3. No Mozambican citizen may be expelled or extradited from the national territory."

2.4. Financial Matters

In the case of sufficient or supported evidences of connection between bank accounts and criminal persons or organisation, involved in money laundering, terrorism and other crimes, the penal law empowers the judge (examining judge or judge of the cause) to order the freezing of the bank accounts and make other forfeitures.

In this regard, legal diploma arrangements bellow require: Article 170 of the Criminal Proceeding Code, Article 75 of the Criminal Code, Articles 5 and 27 of Act 19/91 (on the State Security), Article 50 of the Act 3/97 (on Drugs), Act on Money Laundering, which typifies the relevant crimes in the field of its application, *"... manufacture, import or export, trading of arms and explosives, terrorism, extortion, corruption, embezzlement, black-marketing and tax evasion".*

Thus, banks are obliged to, first and for most, enforce the decision by the judge, with regards to freezing the accounts, provided that it has been so ordered.

3–2, The Bank of Mozambique, within the framework of preventing money laundering practices and/or financing terrorism, instructed financial institutions under its supervision, in other words, banks and financial societies *(comprising Bureaux de Change, group purchases managing companies, capital risk societies, patrimony managing societies, investment fund managing societies, correcting societies)* in order to take the following measures:

a) Implementation of strict criteria for control of authenticity and legality of transactions taking place in theirs services;

b) The need for correct classification of residents and non-residents accounts;

c) Adequate information of the identity and domicile of the accounts holders;

d) Development of clear policies and procedures on the acceptance of the clients, including those clients likely to be of high risk;

e) In the field of foreign exchange operations, taking special measures to verify the origin, purpose and destiny of the funds;

f) With regards to external trade related operations, they must be exclusively carried out through the banking system, using bank credit payment modality, documentary remittances and money transfer;

g) In receiving amounts from abroad and in the purchase of foreign exchange, banks must give detailed report to the Bank of Mozambique on the identity of the persons concerned, whenever the amount is equal or exceeds ten thousands American dollars;

h) Financial institutions must also report to the Bank of Mozambique on note deposits made of amounts equal or exceeding ten thousands American dollars;

i) Authorised exchange houses (Bureaux de change) must keep in their archives, for a one year period, photocopy of the identification documents of clients involved in operations equal or exceeding a thousand American dollars.

The Assembly of the Republic of Mozambique (Parliament) has recently passed an **Law on Money Laundering**, aiming at establishing a legal framework for prevention and punishment for using the financial system for money laundering practices, production of and other profits deriving from criminal activities as defined under the said law.

The Act under appreciation applies to credit institutions, financial societies, insurance companies, casinos, trading societies, pension funds managing societies, stock exchange, bureaux de change, payment instruments issuing services, individual and collective patrimony managing societies, based within the Mozambican territory, and their branches, agencies or any other form of commercial representation, and other institutions likely to engage in money laundering.

3. Relevant Agreements and Conventions

In the fulfilment of its international obligations and in the efforts to combat terrorism, the Government of the Republic of Mozambique subscribed the relevant international Agreements and Conventions. Thus:

- At the margin of the 56th Session of the United Nations General Assembly, the Republic of Mozambique signed the **International Convention for the Supression of the Financing of Terrorism**, of December 9th, 1999, which is part of the 12 Global Conventions package on Terrorism;

- The Republic of Mozambique signed on July 14th, 1999 in Argel (Algeria) the **Organisation of African Unity Convention on the Prevention and Combating of Terrorism**;

- Steps for the ratification of and accession to the above instruments, by the Republic of Mozambique is underway;

- The arrangements for the ratification of the **UN Convention Against Transnational Organised Crime** and the two **Additional Protocols**, signed by H.E. the President of the Republic, in December 2000, when it was adopted in Palermo (Italy), is equally in the sectoral harmonisation stage of the arrangements;

- The Republic of Mozambique is a founding member of the **Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG)**, an East and Southern Africa for preventing and combating money laundering, set up in 1999. In that capacity, Mozambique the adopted 40 recommendations of the Financial Action Task Force (FATF).

4. International Co-operation in Combating Terrorism

Peace, security and stability of Mozambique, Southern Africa and the world at large, are a permanent concern of the Government of the Republic of Mozambique, for they are a guarantee of a harmonious political, economic and social development of peoples.

The prevalence of a climate conflict in some countries of the Southern Africa region and other parts of the world, the growing of negative phenomena such as the proliferation of arms, drug trafficking, money laundering, systematic breach of migration laws and terrorism are currently considered as the main threat to international peace, security and stability, thus requiring a need for effective and concerted measures for their prevention and combat.

In this context, the prevention and combat of terrorism, which has a trans-boundary dimension comprises two directions: one of the national and the other international. The first is predominated by internal prevention and repressive mechanism, while the other by international co-operation.

At the regional level, Mozambique co-operates with other countries of the region, either at bilateral and multilateral levels in the prevention and combat to this evils, which hit the region.

The SADC[1] Organ, a Defence and Security Body, has plaid a fundamental co-ordinating role of actions to combat organised crime, arms trafficking and other trans-boundary crimes.

In this regard, the last Ministerial Meeting held in Luanda (Angola), from 16th to 18th December, 2001, on the pursuance of regional actions to prevent an combat terrorism, further recommending the presentation of and its financing forms to be submitted to the Summit of Heads of States and Governments of that Organisation.

Mozambique, in its capacity of a member of the International Organisation of Criminal Police – **Interpol** – subscribed the GA–05–2001 Resolution on the terrorist attacks of 11th September in the United States of America, adopted by the 70th Session of the GA of Interpol, held in Budapest, Hungary, last September.

Among other aspects, the resolution calls upon member States to make the maximum use of the capacity installed at the Interpol Communication System for rapid sharing of operative information with regards to terrorism.

It is important to underline, still in the event of the above mentioned resolution, that member countries are obliged to send information related to terrorism to the Interpol General Secretariat, based in Lyon (France), where an operative squad is ready 24 hours a day, for reception, treatment and dissemination of information.

At the SADC regional context, there is a co-operation and collaboration mechanism among police authorities towards combating crime. In this regards, following the adoption of the GA-05-2001 Resolution, the said mechanism of co-operation and collaboration started to cover also terrorism issues.

Mozambique National Interpol Office remains alert, so that as soon as it receives information on terrorism, it can immediately forward it to the competent authorities or communicate interested countries.

5. Conclusions

The fight against terrorism takes quite long and it is a complex exercise, For that reason, it requires an effective co-operation among States in order to achieve the ultimate goal of combating terrorism.

Due to the need to adopt means for a more adequate and efficient response to the challenges brought about by prevention and combat to crime, at large and to terrorism in particular, The Government of the Republic of Mozambique is carrying out a study in order to identify sectors requiring adjustments, harmonisation, as well as regulation of its national legislation and its enforcement.

Particular attention is devoted, in this context, to legislation on migration, extradition and procedures for granting refugee status, apart from needs assessment for technical assistance.

It must be stressed that in the approach of the terrorism issue, not only external origin acts are to be considered, but also those of internal origin in a given State.

The Government of the Republic of Mozambique, within the means available, reiterates its commitment in collaboration with other States, both at regional and international level, to prevent and combat.

[1] Southern Africa Development Community.

The Mozambican Government considers that the United Nations should be the driving force for this challenge, which is imposed upon us today.

Maputo, December, 2001